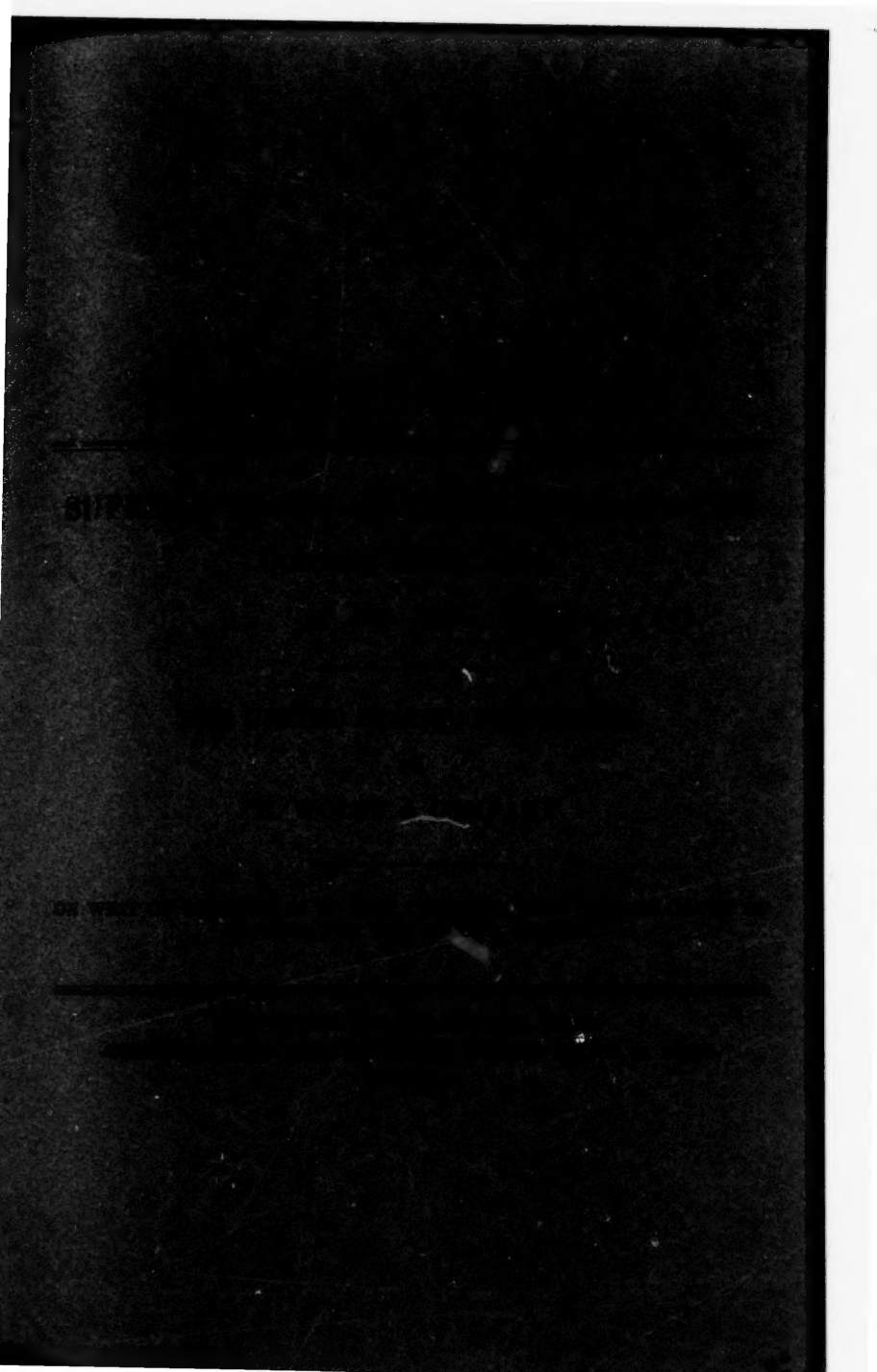

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 295.

THE UNITED STATES, PETITIONER,

vs.

H. WOLFF & COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States circuit court of appeals for the second circuit.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Transcript of record.—Appeal from the circuit court of the United States for the southern district of New York.

1 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post-office building, in the city of New York, on the fifth day of April, 1895.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of certain importations of merchandise made by H. Wolff & Co., on the vessels and at the dates as set forth in the annexed Schedule A, which is hereby referred to and made a part hereof.

SCHEDULE A.

The following are the importations and the entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Entered.	Protest No.	Decisions.
57433	H. H. Meier	Apl. 3/93	51525 A-8974	Mch. 8/95
58502	La Bretagne	" 4/93	51482 A-8972	"
131294	Elbe	Aug. 3/93	57236 A-14807	"
20735	Trave	Feb. 12/94	65631 A-3130	Mch. 6/95
21635	La Champagne	" 13/94	65473 A-3175	" 8/95

2 SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 60 per cent ad valorem on certain beads, stones, &c., thereby making errors of law and fact by failing to find, or finding the contrary of, the following propositions:

1. Said merchandise is glass beads, loose, unthreaded or unstrung.

2. Said merchandise is imitations of precious stones, composed of glass or paste, and does not exceed one inch in dimensions and is not set.

3. Said merchandise is manufactures, of which metal, and not glass, is the component material of chief value.

4. Said merchandise assimilates to precious stones within the sense and meaning of section 5, act of October 1, 1890.

5. The merchandise, of which proposition 1 is true, is dutiable at 10 per cent ad valorem, under par. 445 of said last mentioned act.

6. The merchandise, of which proposition 2 is true, is dutiable at 10 per cent ad valorem, under par. 454 of said act.

7. The merchandise, of which proposition 4 is true, is dutiable at 10 per cent ad valorem, under par. 454 and section 5 of said act.

8. The remaining merchandise is dutiable under par. 215 of said act, at 45 per cent ad valorem.

3 EXHIBIT A.

CUSTOM-HOUSE, PORT OF NEW YORK,
Collector's Office, June 12, 1893.

Hon. Board of U. S. Gen'l Appraisers, at the port of New York.

GENTLEMEN: I submit the protest of H. Wolff & Co. $\frac{51482}{\#8972}$ from the assessment of duty by this office at the rate of 60% ad valorem on certain so-called "beads in bunches" imported by them in the "Bretagne" Apl. 4–93.

An inspection of the invoice shows that the merchandise was returned by the appraiser as "mfs. glass 60%."

Duty was assessed thereon at the rate above stated under the provisions of par. 108, N. T. Note G. A., 257, 644, 665, 876, 934, & 936.

I have to report that the claimants have complied with the requirements of section 14 of the act of June 10, 1890.

The naval officer concurs in the decision of this office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully, yours,

J. J. COUCH,
Special Deputy Collector.

(3 inclosures.)

4 EXHIBIT F.

NEW YORK, *May 20, 1893.*

COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Protest is hereby made against your decision assessing duty at 60% ad val. on beads in bunches and otherwise and imitation stones covered by entries below named. The ground of objection, under the tariff act of October 1, 1890, is that said merchandise is not composed wholly or in chief value of this blown glass and is not otherwise covered by par. 108. It is covered by, and is dutiable under, par. 453, at 10% ad val. (directly or by assimilation or because of the component of chief value), par. 454 at 10% ad val. (by assimilation to precious stones, not set, or imitations of precious stones, or because composed wholly or in chief value of the latter), or par. 445 at 10% ad val. (directly or by assimilation or component of chief value), or sec. 4 at 20% ad val. (the entire or chief component being glass beads provided for as a separate article), or par. 454 at 25% ad val. (by assimilation to precious stones, set), or par. 76 at 25% ad val. (because composed wholly or in chief value of a chemical compound), or par. 459 at 25% ad val. (as manufactures wholly or in chief value of amber, coral, jet, paste, spar, or wax), or par. 215, at 45% ad val. (as manufactures wholly or in chief value of metal).

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

5 The excess is paid under compulsion, solely to obtain possession of said merchandise, and you and the Government are held liable for the same:

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks and Nos.
58502.	La Bretagne.	Apl. 4/93.	C.	May 10 93.	H. W. & C. 1108. and various as per entries and invoices.

Respectfully,

H. WOLFF & CO.,
By COMSTOCK & BROWN,
Attorneys, 80 Broadway, New York City.

51482.

EXHIBIT K.

Before the U. S. General Appraisers at New York, Mar. 8, 1895.

In the matter of the protests $\frac{51482\text{—A \&c.}}{22254\ A/2059}$, etc., of R. Epstein and others against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain strung beads imported per the vessels and entered of the dates specified in the schedule.

Opinion by Sharretts, G. A.

We find as facts that the goods in question are made of glass, or of which glass is the component material of chief value, strung on threads or cords, being of the same character as those which were the subject of the board's decision on protests 8258*a*, &c. (not yet published), of H. Schmalhausen and others.

Following said decision, we hold that the goods are dutiable as assessed, at 60% ad valorem, under paragraph 108, act of October 1, 1890, and overrule the protests on all grounds.

W. F. LUNT,
J. B. WILKINSON, Jr.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

6 EXHIBIT L.

(G. A. 2961.)

Glass beads, strung.

Before the U. S. General Appraisers at New York, March 6, 1895.

In the matter of the protests 8258*a*–7228, etc., of Dunham, Buckley & Co., H. Schmalhausen, and others against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain glass beads, strung, imported per the vessels and entered at the dates specified in the schedule hereto appended.

Opinion by Sharretts, General Appraiser.

The goods here subject of protest consist of beads made of glass, or of which glass is the component material of chief value, strung upon

threads or cords for the purpose of assorting or for convenience in handling or transportation.

They were assessed for duty at 60 per cent ad valorem under paragraph 108, act of October 1, 1890, and are claimed to be dutiable at 10 per cent ad valorem under paragraphs 445 or 454, or at 25 per cent ad valorem as a chemical compound or as manufactures of wax not specially provided for under paragraph 76 or 459, or at 45 per cent ad valorem under paragraph 215, or at 50 per cent ad valorem under paragraph 452.

The board held, in G. A., 876, that similar goods (protest 11470*a*) were dutiable at 60 per cent ad valorem as assessed in these cases. On the importers' appeal (suit No. 592, Steiner, Kahn & Co.) the circuit court for the southern district of New York, and the circuit
7 court of appeals for the second circuit, successively affirmed the board's decision.

We find as facts that the goods are of the character above described, consisting of beads made of glass or of which glass is the component material of chief value, strung upon threads or cords.

We accordingly overrule the protests upon all grounds and affirm the assessment of duty in each case.

W. F. Lunt,
J. B. Wilkinson, Jr.,
Thad. S. Sharretts,
Board of U. S. General Appraisers.

United States circuit court, southern district of New York.

In the matter of the application of H. Wolff & Co., as to certain importations per "H. H. Meier," April 13, 1893, "La Bretagne," April 4, 1893, &c. No. 2182.

Before Hon. George H. Sharpe, as officer of the court.

New York, *May 19, 1896.*

Appearances: For the Importers—Albert Comstock (of Comstock & Brown). For the collector and Government—J. T. Van Rensselaer, Asst. U. S. Attorney.

It is hereby stipulated by and between counsel for the respective
8 parties hereto that the testimony taken in suit No. 2174, E. A. Morrison, shall apply herein so far as the same may relate to the merchandise which is the subject of this suit, with the same force and effect as though taken and returned herein.

Counsel for both parties hereto rest.

Testimony closed.

Morrison & Son } No. 2174.
vs.
United States. }

Wolff & Co. } No. 2182.
vs.
United States. }

Wheeler, *J.:*

The tariff act of 1890, by paragraph 108, provides for a duty of 60 per cent on "thin blown glass * * * and all other manufactures

of glass, or of which glass shall be the compound material of chief value, not specially provided for;" by paragraph 445, for a duty of 10 per cent on "glass beads, loose, unthreaded or unstrung;" and by paragraph 454 for a duty of 10 per cent on "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set." There is no mention of beads strung. These
9 importations are of variegated glass beads, strung; similar glass ornaments without holes for stringing; black glass beads, sometimes called nail heads, unstrung, and hollow glass beads with wax inserted, giving an appearance like pearl strung. They have all been classified as manufactures of glass under paragraph 108, against protests referring to paragraphs 445 and 454. The classification of the black glass heads unstrung is, upon the evidence, conceded to be erroneous. Beads unstrung are impliedly beads capable of being strung; and the ornaments without holes for stringing are not such. The variegated beads strung are manufactures of glass, and, as they were not specially provided for, were properly classified. The wax beads, although they may be imitations of pearls as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes the imitation. And imitations of precious stones, unset, are impliedly imitations capable of being set, which these beads are not.

Decision of General Appraisers reversed as to black glass beads, and affirmed as to the residue.

Comstock & Brown, for plaintiffs.

James T. Van Rensselaer, Asst. U. S. attorney, for United States.

10 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 23d day of December, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Hon. Hoyt H. Wheeler, judge.

H. WOLFF & CO. }
vs. } "A" suit, No. 2182.
UNITED STATES. }

The above cause coming on for hearing and determination before this court on the application of H. Wolff & Co., importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon, and the further evidence taken in the circuit court herein;

Now, after hearing James T. Van Rensselaer, assistant U. S. attorney, on behalf of the collector, for affirmance, and Comstock & Brown, counsel for the said importers, for reversal, on motion of Wallace Macfarlane, U. S. attorney,

It is ordered, adjudged, and decreed that there was no error in said

proceedings before said Board of General Appraisers, and that their decisions herein be and the same are hereby in all things affirmed.

(Sg'd) HOYT H. WHEELER,
U. S. Judge.

Consented to.

COMSTOCK & BROWN,
Attys. for Importers.

11 United States circuit court of appeals for the second circuit.

HERMAN WOLFF AND LOUIS WOLFF, TRADING AS H. Wolff & Co., in the matter of their importations by "H. H. Meier," April 3, 1893, et al., appellants,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } No. 2182.

Assignment of errors.

The above-named appellants hereby assign error to the decision and judgment of the circuit court of the United States for the southern district of New York herein in the following particulars:

First. In that the said court ordered, adjudged, and decreed that the decision of the Board of U. S. General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that paragraph 108, act of October 1, 1890, covered and provided for the merchandise in question.

Third. In that the said court did not order, adjudge, and decree that the provision for "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set," in paragraph 454 of the said act covered and provided for said merchandise.

12 Fourth. In that the said court did not order, adjudge, and decree that the decision of the said Board of General Appraisers should be in all things reversed.

Dated New York, January 6, 1897.

COMSTOCK & BROWN,
Attorneys for Importers, Appellants.

United States circuit court of appeals for the second circuit.

H. WOLFF & CO., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2182.

It is hereby stipulated by and between the counsel for the respective parties to this action that all the requirements of law as to protest, appeal to the U. S. circuit court, and appeal to this court have been duly and properly complied with herein, and that of the record and appeal to this court the following portions only shall be printed, viz:

The caption and Schedules A and B of the original petition, the collector's letter of June 12, 1893, the protest of May 20, 1893—all the several protests and collector's letters being substantially alike—the

decisions of the General Appraisers, the stipulation of counsel returned by the referee herein, the opinion of the circuit judge, the decree
13 of the circuit court, the assignment of errors, and this stipulation, and that no endorsement of or on any paper shall be printed.

And it is further stipulated that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act, as manufactures of glass not specially provided for.

Dated New York, March 18, 1897.

WALLACE MACFARLANE,
U. S. Attorney, for the Appellee.
COMSTOCK & BROWN,
For Appellants.

Ordered accordingly.
N. Y., March 20, 1897.

E. H. LACOMBE,
U. S. Circuit Judge.

14 United States circuit court of appeals for the second circuit. Nos. 54 and 55. October term, 1897.

Submitted December 17, 1897. Decided January 7, 1898.

E. A. MORRISON & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2174.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2182.

Appeals from the circuit court of the United States for the southern district of New York. Before Judges Lacombe and Shipman.

SHIPMAN, circuit judge.

In the year 1891, E. A. Morrison & Son imported into the port of New York two invoices of glass strung beads not exceeding one inch in dimensions, of two different kinds. One kind consisted of small brown beads, which were a very poor imitation of the precious stone known as "cats-eye," which were used principally in the millinery trade for trimming, or for trimming ladies' garments, and were popularly styled "jewels" or "jewel stones." The second kind consisted of larger beads than those of the first class, which were also strung and were imitations of precious stones, and did not exceed one inch in dimensions, and
15 were used for trimming and were also called "jewels." In 1893 and 1894, H. Wolff & Company imported into the port of New York sundry invoices of glass strung beads, not exceeding one inch in dimensions, which were imitation pearl beads and were called by that

name, or were called wax beads, or Roman beads, and were used for necklaces or for trimming. All these articles have been long commercially known as beads. The collector assessed a duty of sixty per cent ad valorem upon all of these goods under paragraph 108 of the tariff act of 1890, which was as follows: "Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importers protested that the goods were dutiable under paragraph 454 of the same act, which imposed a duty of ten per cent ad valorem upon "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set." The Board of General Appraisers sustained the collector and the circuit court affirmed the decision of the Board upon the articles now in question, whereupon the importers appealed to this court. The cases were tried together upon substantially the same record.

"Glass beads, loose, unthreaded or unstrung" are dutiable at ten per cent ad valorem under paragraph 445 of the act of 1890. There is no duty specifically placed upon glass strung beads, and it is conceded that the merchandise in question was excluded from classification under paragraph 445, and that unless it was dutiable under paragraph 454, it was properly classified by the collector under paragraph 108, as manufactures of glass not specially provided for.

The articles were, in both popular and in commercial language, beads. The two Morrison importations, which were used for trimming were also called, apparently for convenience sake, "jewels," but this subname has no bearing upon the classification for tariff purposes. The
16 term "imitations of precious stones" is not a commercial term and has no especial commercial meaning. All these articles were in fact imitations of precious stones and are known to be such by the people who deal in them. The term "imitations of precious stones, unset," implies that there were imitations which were set; that is, made into or arranged as ornaments or imitation jewelry. A natural suggestion is that the two Morrison importations were to be exclusively used for trimming ladies' hats or apparel, and were not to be set into ornaments for the person, but there can be no practical tariff distinction between imitations of precious stones, made of glass or paste, unset, which are to be set into articles of jewelry and those imitations which are to be used as ornaments upon ladies' hats or apparel.

Inasmuch as the only glass beads which are named in the tariff act are unstrung beads, these strung beads are not classified by name, and their position for tariff purposes must be within some paragraph of general description. The only two paragraphs that can be discovered which describe them are Nos. 454 and 108. They are imitations of precious stones, composed of glass or paste, of the designated size, and are unset, and they are manufactures of glass, and if not specially provided for must fall into the general receptacle for glass articles which have escaped other classification. But adequate provision seems to have been made for them by the terms of paragraph 454.

The decision of the circuit court so far as it related to the articles in question is reversed.

Albert Comstock, for the appellants.
James T. Van Rensselaer, assistant United States attorney, for the appellee.

17 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court rooms in the city of New York on the 19th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorables E. Henry Lacombe, Nathaniel Shipman, circuit judges.

H. WOLFF & CO., APPELLANTS,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. 2182.

The appeal from the decision of the circuit court of the United States for the southern district of New York herein, made on the 9th day of December, 1896, having come on to be heard, and due deliberation having been had thereon.

Now, on motion of Albert Comstock, esq., of counsel for the appellants, it is

Ordered, That the decision aforesaid be, and the same is hereby, reversed, and that the merchandise which is the subject of this proceeding is properly dutiable at 10% ad val. under Par. 454, tariff act of October 1, 1890, as imitations of precious stones; and it is further

Ordered, That a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to proceed in accordance with the opinion of this court.

Assented to as to form.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Appellee.

18 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 17, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of H. Wolff & Company, appellants, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the said United States the one hundred and twenty-second.

[SEAL.] WM. PARKIN, *Clerk.*

19 (Indorsed:) Case No. 16870. U. S. C. C. of appeals, 2nd circuit, Term No., 295. The United States, petitioner, vs. H. Wolff & Company. Exhibit to petition for writ of certiorari. Filed May 5, 1898.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which H. Wolff & Company are appellants and the United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
21 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

22 (Indorsed:) Supreme Court of the United States. No. 657. October term, 1897. The United States vs. H. Wolff & Company. Writ of certiorari.

23 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLEE,
vs.
H. WOLFF & COMPANY, APPELLANT, } No. 657.

Stipulation.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the United States circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, may be treated as the return to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.

ALBERT COMSTOCK,
Counsel for Respondent.

(Endorsed:) Wolff & Co. vs. U. S. Stipulation as to writ of certiorari. United States circuit court of appeals, second circuit. Filed June 3, 1897. William Parkin, clerk.

24 *To the honorable the Supreme Court of the United States:*

The record and all proceedings in the cause whereof mention is within made, having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certi-

fied copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, June 3rd, 1898.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

25 (Indorsed:) United States circuit court of appeals, second circuit. Wolff & Company vs. United States. Return to writ of certiorari.

26 (Indorsement on cover:) Case No. 16870. Supreme Court U. S. October term, 1898. Term No., 295. The United States, petitioner, vs. H. Wolff & Co. Writ of certiorari and return. Filed June 9, 1898.